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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement by the International Fellowship of Reconciliation, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV)

[25 February 1994]

PROPOSED CONFLICT RESOLUTION PATHWAYS FOR IRAQ 1/

1. Together with the former Yugoslavia (E/CN.4/Sub.2/1993/NGO/29) and the Baltic States (E/CN.4/Sub.2/1993/NGO/27), Iraq presents the most challenging - and potentially the most rewarding - case of valid but forgotten or disregarded international minority protection guarantees (E/CN.4/Sub.2/1992/NGO/27). And given the unbearable humanitarian tragedy of the peoples involved, the Governments may find it useful to take a fresh look at these instruments and possible pathways for their prompt and effective application.

2. In early 1992, following the Gulf war, the Good Offices Group of European Lawmakers proposed an original plan of its own. It communicated its ideas, archive material and analysis primarily to the decision-makers of the parties to the conflict, thus contributing to the legal and political underpinnings for the increasingly accepted unprejudicial interim solution covering the "illegally occupied", contested or destabilized territories of the former Kingdom of Iraq.

3. These territories, provisionally, would be administered by the United Nations or under its supervision, based on corresponding General Assembly decisions and formulas inspired by the United Nations Trusteeship System and the Free Territory of Trieste Agreement (UNTS 49,3). And they would reflect the international minority protection guarantees contained in the still valid Declaration of the Kingdom of Iraq of 30 May 1932 (reproduced in: E/CN.4/Sub.2/1992/NGO/27; see also: E/CN.4/367). Other elements of this lawmaker plan provide for the recognition, by the General Assembly, of Trustees, Community Elders or Special Minority Representatives who, chosen for their competence by the peoples covered by these international guarantees, are to participate in all related negotiations and to advise all involved United Nations bodies.

4. On 14 February 1994, the Iraqi Delegate to the Commission on Human Rights sought to demonstrate how well successive Iraqi Governments, particularly since 1954, have provided for the protection and non-discrimination of their Assyrian, Kurdish and Turkoman minorities in particular with regard to their cultural heritage, their racial, religious and linguistic specificity and their human rights.

5. Notwithstanding the compelling contrary findings notably of the Commission's Special Rapporteur on Iraq (A/46/647; A/47/367 Add.1; E/CN.4/1992/31; S/24386; E/CN.4/1993/45; E/CN.4/1994/58), the Iraqi Delegate based himself essentially on corresponding constitutional provisions and numerous Iraqi laws. He didn't question the continuous validity, in international law, of the pre-eminent Iraqi Declaration of 30 May 1932.

6. In the hands of far-sighted and imaginative politicians with an agenda for generations rather than for the next United Nations decision on Iraq, this constitutive document may help to address effectively and promptly the human rights tragedy of the Iraqi people as a whole, not excluding the minorities living in Northern Iraq. For it contains international minority protection

guarantees and a mechanism to enforce them by providing - in combination with General Assembly resolution 24 (I) of 12 February 1946 - that a suitable United Nations body, in case of "any infraction, or any danger of infraction of any of these obligations" may "take such measures and give such directions as it may deem proper and effective in the circumstances" (arts. 10 and 16).

7. Also, the January 1992 statement of the Iraqi Vice Prime Minister Tariq Aziz - "Iraq would be the first to recognize Kurdish independence" (E/CN.4/1992/31, para. 108) - was subsequently confirmed to reflect official Iraqi policy. 2/ Conceivably then, the Iraqi tragedy may be brought to an early end without jeopardizing Iraq's legitimate core interests - and with due regard to the legitimate concerns of Iraq's neighbours. This may be achieved with the help of the United Nations by way of a creative use of this widely underestimated 1932 Declaration.

8. Giving tangible and exemplary meaning to the concepts of pacta sunt servanda and international minority protection guarantees, the United Nations General Assembly, based on its resolution 24 (I) of 1946, may find it indicated to assign the related powers and functions, e.g., to the Trusteeship Council. It may declare that part of the Mosul Vilayet which is not under Iraqi Government control to be off limits with regard to the economic sanctions imposed on Iraq. Also, the General Assembly could request the International Court of Justice urgently to render an Advisory Opinion (Art. 96 of the Charter of the United Nations) on related questions, e.g. on the continued validity, under jus cogens and in international law, of sanctions the maintenance of which inadvertently produce effects in contradiction to international conventions.

9. Such measures could promptly unlock the apparent present gridlock and lead to politically unprejudicial, humanitarianly acceptable and economically self-sustaining principled interim solutions. Eventually, these may go beyond the Mosul Vilayet and cover the Baghdad and/or the Basra vilayets.

10. As suggested for the cases of former Yugoslavia and others, the measures thus envisaged could take the form of temporary United Nations Protectorates, Trusteeships or similar arrangements. They could significantly - and in a mutually stabilizing manner - alter the political equation in the respective region. They could precede and facilitate the lifting of the economic sanctions on all of Iraq.

11. The proposed measures could bring to the populations concerned the overdue relief, without prejudice to their ultimate political fate. In the case of the Mosul Vilayet's Yezidi and the Muslim, Christian and Jewish Arabs, Armenians, Assyrians, Kurds, Turkomans and others, this would entail in time the eventual, freely-decided re-attachment of their ancestors' territory to either Iraq or Turkey, its attachment to Syria or Iran, or its eventual independence.

12. Also, in the cases of the Christian, Shiite and Sunnite inhabitants of the Baghdad and the Basra vilayets, further developments are conceivable which seem worthy of these peoples' great cultural past. This might include interim solutions for Palestinians of all faiths who, in the event, may need complementary solutions and fallback positions. However, that road may be opened only by a deliberate - and sanctions-relevant - dissolution of existing structures into a federated state involving notably the Kingdom of Jordan.

Notes

1/ This written statement has been prepared in cooperation with the Good Offices Group of European Lawmakers and its research branch, CORUM (POB 2580, 1211, Geneva 2). Its editor, J.A. Keller, is alone responsible for eventual errors and omissions. He wishes to express his gratitude for the assistance and numerous services provided by the United Nations Office in Geneva, by the director of the United Nations Geneva Library and by the League of Nations archivist and their staff.

2/ Private communication to the Secretary of the Good Offices Group of European Lawmakers (POB 2580, 1211, Geneva 2) by the then-Iraqi Chargé d'affaires in Geneva. This state of affairs may in particular reflect the spreading awareness of the legal difficulties awaiting any Iraqi Government wishing to export oil from the Mosul Vilayet (Northern Iraq which, in 1925, was only conditionally attached to the Kingdom of Iraq). Such risks might be avoided through negotiations. In the absence of corresponding agreements with the original Arab, Armenian, Assyrian, Kurdish and Turkoman landowners concerned, the latter might find effective judicial protection of their property rights through coercive enforcement measures wherever Iraqi oil will eventually be exported to - simply by invoking said Iraqi Declaration of 1932 (arts. 14 and 16).

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